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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,214	04/11/2001	Earl J. Votolato	SPELL-003B	9944

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EXAMINER

DRUAN, THOMAS J

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 05/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/832,214

Applicant(s)

VOTOLATO, EARL J.

Examiner

Thomas J. Druan, Jr.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to Applicant's amendment received on 10 February 2003.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

3. Claims 1-3 & 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,980,977 to Matin et al. (hereinafter Matin).

Matin discloses the invention as claimed including a handle 2; a blade 7; a transparent (column 4, lines 40-41) blade cover/cap structure 8 with spring 10; and a blade-cover locking system comprising a cover lock member with a first engagement element, notch 21 (in Fig. 2A) in a wall of the blade cover, and hand-operable cover-release member 16/17/22 with a second engagement member, a distal end of outwardly biased arm structure 22, whereby engagement of said elements with each other maintains the blade cover in a locked mode (column 2, lines 2-6). Said cap member has a floor formed by flanges 23, with a slot between said flanges from where the blade 7 is exposed during a cutting operation (Fig. 5A). Arm 22 and handle 2 are fabricated from the same piece of material (column 2, lines 23-30).

4. Claims 1 & 6 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,308,418 to Sweet (hereinafter Sweet).

Sweet discloses the invention as claimed including a handle 14 with an arm structure 22, wherein the handle and arm are fabricated from the same piece of material; a blade 100; an integral, movable blade cover 16 with a blade cover biasing member, spring 50, for urging the blade cover to a position covering the blade (column 6, lines 23-28); and a blade-cover locking system comprising a cover lock member 12 with a first engagement element, aperture 54, that cooperates with a second engagement member, a distal end 28 of arm structure 22, whereby engagement of said elements with each other maintains the blade cover in a locked mode, and disengagement with each other releases the blade cover from said locked position.

Claim Rejections - 35 USC § 103

5. Claims 4 & 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Matin.

Matin discloses the invention as claimed, including a cap structure that is arcuately movable and a cap structure that is arcuately shaped at a rear end thereof (see Fig. 2A).

Alternatively, if it was intended that the entire cap structure be arcuately shaped, then Matin discloses the invention substantially as claimed, including a cap structure that is arcuately movable, but lacks a cap structure that is arcuately shaped. It would have been obvious to one skilled in the art to make the cap structure of Matin arcuately shaped so as to better conform to the shape of a blade which is arcuately shaped (column 3, lines 14-19) since it has been held that a change in form or shape is generally recognized as being within the level of ordinary skill in the art.

Response to Arguments

6. Applicant's arguments filed 10 February 2003 have been fully considered but they are not persuasive. Applicant contends that the arm and handle of Matin are not fabricated from the same piece of material because the arm is "manually inserted into the handgrip portion of the knife."

Applicant's remarks are well taken; however, it is the Examiner's position that the reference anticipates the claimed rejection. Matin discloses a knife with a guard that is locked in a position covering a blade until a release assembly is manually triggered, allowing the guard to pivot up and allow the blade to be used. The specification of Matin discloses that the knife can be made entirely out of metal or made of plastic via compression molding (column 4, lines 50-56), where a single plastic charge is set in a mold and force is applied to spread the plastic into a mold. Oftentimes a single mold produces several pieces, that can be separated and used together in a single device. Therefore, both the arm 22 and handle 2 of Matin can be fabricated from the same piece of material. The examiner notes that the language "fabricated from the same piece of material" does not require that the pieces be formed as a single, unitary, or continuous piece. Therefore, the grounds of rejection is deemed proper.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Druan, Jr. whose telephone number is 703-308-4200. The examiner can normally be reached on M-F (8:30-6:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



BOYER ASHLEY
PRIMARY EXAMINER

agj
tjd

April 24, 2003